

Special rules with respect to section 501(c)(3) organizations. Guidance is provided in three factual situations as to whether the described organizations have given the notice required by section 508(a) of the Code within the 15-month period described in section 1.508-1(a)(2)(i) of the regulations.

ISSUE

In the three situations described below, have the organizations given the notice required by section 508(a) of the Internal Revenue Code within the 15-month period described by section 1.508-1(a)(2)(i) of the Income Tax Regulations?

FACTS

Situation 1

X submitted a properly completed and executed Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, within 15 months from the end of the month in which it was organized. While the application was still pending and prior to the issuance of any adverse ruling or adverse determination letter, X submitted a letter to the Service requesting that its application be treated as withdrawn. The Service thereupon closed the application file and notified X of such action in writing. Two years later, X submitted a new application on Form 1023. The new application established that X had been described in section 501(c)(3) continuously from the date it was organized.

Situation 2

Y submitted a properly completed and executed Form 1023 within 15 months from the end of the month in which it was organized. While the application was still pending and prior to the issuance of any adverse ruling or adverse determination letter, Y submitted an application for recognition of exemption as an organization described in section 501(c)(4) of the Code together with a letter requesting that its application as an organization described in section 501(c)(3) be treated as withdrawn. Thereupon, the Service closed the section 501(c)(3) application file and issued a letter to Y recognizing its exemption as an organization described in section 501(c)(4). Two years after withdrawal of the section 501(c)(3) application, Y submitted a new application on Form 1023 requesting recognition of exemption as an organization described in section 501(c)(3). The new application established that Y has been described in section 501(c)(3) continuously from the date it was organized.

Situation 3

The Service issued a group exemption letter to C, a central

organization, recognizing its listed subordinate organizations as described in section 501(c)(3) of the Code. Z is a subordinate organization of C and is not a private foundation. One month after Z was organized, C listed it as a subordinate organization covered in the group exemption ruling. Five years after such listing, Z withdrew from the group exemption and applied separately on a Form 1023 for recognition as an organization described in section 501(c)(3). Z filed its application with the Service within 15 months from the date of its withdrawal from the group exemption. The application established that Z has been described in section 501(c)(3) continuously from the date it was organized.

LAW AND ANALYSIS

Section 508(a) of the Code provides, with certain mandatory exceptions not applicable here, that an organization organized after October 9, 1969, shall not be treated as an organization described in section 501(c)(3) for any period before it gives notice to the Secretary that it is applying for recognition of such status unless the notice is within the time prescribed by the regulations for giving such notice.

Section 1.508-1(a)(2)(i) of the regulations provides that an organization will be treated as described in section 501(c)(3) of the Code for the period prior to the giving of the notice referred to in section 508(a) if the notice is filed within 15 months from the end of the month in which an organization was organized. Such notice is filed by submitting a properly completed Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.

Section 1.508-1(a)(3)(i)(c) of the regulations provides an exception to the notice requirements of section 1.508-1(a)(2)(i) for subordinate organizations (other than private foundations) covered by a group exemption letter.

The legislative history of section 508(a) of the Code evidences Congressional intent that the organization's notification include its claimed status in order to comply with the section. S. Rep. No. 91-552, 91st Cong., 1st Sess. 54 (1969), 1969-3 C.B. 423, 459; H.R. Rep. No. 91-413, (Part I), 91st Cong., 1st Sess. 38 (1969), 1969-3 C.B. 200, 225.

The act of withdrawing the application for recognition of exemption prior to the issuance of any adverse ruling or adverse determination letter cancels the organization's previous notification to the Service required under section 508 of the Code since it has withdrawn its claim to section 501(c)(3) status. Therefore, the organizations in Situations 1 and 2 have not timely met the notification requirement of section 508(a)(2) and section 1.508-1(a)(2)(i) of the regulations and will be treated as organizations described in section 501(c)(3) of the Code only on a prospective basis from the date of the filing of

the second Form 1023 requesting recognition of exemption as an organization described in section 501(c)(3).

Situation 3 presents a different set of circumstances. For five years the organization was covered under a section 501(c)(3) group exemption. The organization's exemption had been recognized under the group exemption letter from the date of its creation as allowed by section 1.508-1(a)(3)(i)(c) of the regulations. The regulation provides that subordinate organizations (other than private foundations) covered by a group exemption letter are excepted from the section 508 notice requirement.

Upon withdrawing from the group exemption, the organization in Situation 3 was no longer covered by the exception to the notice requirement of the regulation. Accordingly, the date of withdrawal from the group exemption starts running the 15-month period described in section 1.508-1(a)(2)(i) of the regulations.

Because the organization filed its Form 1023 within 15 months of its withdrawal from the group ruling, it continuously maintained its section 501(c)(3) status from the date of its organization.

HOLDING

In Situations 1 and 2 X and Y have not given the notice required by section 508(a) of the Code within the period prescribed by section 1.508-1(a)(2)(i) of the regulations and will be treated as organizations described in section 501(c)(3) only on a prospective basis from the date of the filing of the second Form 1023 requesting recognition of exemption as an organization described in section 501(c)(3). In Situation 3, Z has given the notice required by section 508(a) within the period permitted by section 1.508-1(a)(2)(i) and will be treated as an organization described in section 501(c)(3) from the date of its organization.

APPLICATION FOR EXTENSIONS OF THE TIME FOR FILING NOTICE UNDER SECTION 508(a)

The Service will give consideration to applying the Commissioner's discretionary authority under section 1.9100-1 of the regulations to extend the time for satisfying the notice requirement of section 508(a) of the Code. Rev. Proc. 79-63, 1979-2 C.B. 578, provides information and sets forth the representations that taxpayers must furnish to obtain such relief. It also discusses factors that will be taken into consideration in determining whether such extensions will be granted.